

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 13-74303-ast

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6 In the Matter of:

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8 PERSONAL COMMUNICATIONS DEVICES, LLC,

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10 Debtors.

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14 U.S. Bankruptcy Court

15 Alfonse M. D'Amato Federal Courthouse

16 290 Federal Plaza

17 Central Islip, New York

18
19 August 21, 2013

20 11:06 AM

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22
23 B E F O R E :

24 HON ALAN S. TRUST

25 U.S. BANKRUPTCY JUDGE

1 Motion to Use Cash Collateral (Motion of Debtors for Interim
2 and Final Orders (A) Authorizing the Debtors to Obtain Post-
3 Petition Financing and to Grant Security Interests and
4 Superpriority Administrative Expense Claims Pursuant to 11
5 U.S.C. 105(a), 364(c); (B) Authorizing the Debtors to Use
6 Cash Collateral; (C) Modifying the Automatic Stay Pursuant
7 to 11 U.S.C. 362; (D) Granting Adequate Protection Pursuant
8 to 11 U.S.C. 361 and 363; and (E) Scheduling a Final Hearing
9 Pursuant to Bankruptcy Rule 4001) filed by Emanuel C. Grillo
10 on behalf of Personal Communications Devices, LLC [4]

11
12 Motion to Authorize/Direct (Motion of the Debtors for Entry
13 of Interim and Final Orders Authorizing the Debtors to (I)
14 Pay Prepetition Personnel Wages, Salaries, and Other
15 Compensation; (II) Reimburse Prepetition Personnel Business
16 Expenses; (III) Make Payments for Which Prepetition Payroll
17 Deductions Were Made; (IV) Continue Employee Benefit
18 Programs; (V) Pay Workers Compensation Obligations; and (VI)
19 Pay All Costs and Expenses Incident to the Foregoing) Filed
20 by Emanuel C. Grillo on behalf of Personal Communications
21 Devices, LLC [5]

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1 Motion to Authorize/Direct (Motion of the Debtors for
2 Interim and Final Orders Authorizing the Debtors to (I)
3 Continue Using Debtors Bank Accounts and Cash Management
4 System, and (II) Honor Certain Prepetition Obligations
5 Related Thereto) Filed by Emanuel C. Grillo on behalf of
6 Personal Communications Devices, LLC [6]

7
8 Motion for Continuation of Utility Service (Motion of the
9 Debtors for Interim and Final Orders (A) Prohibiting Utility
10 Companies from Discontinuing, Altering, or Refusing Service,
11 (B) Deeming Utility Companies to Have Adequate Assurance of
12 Payment, and (C) Establishing Procedures for Resolving
13 Requests for Additional Assurance) Filed by Emanuel C.
14 Grillo on behalf of Personal Communications Devices, LLC [7]

15
16 Motion to Authorize/Direct (Motion of the Debtors for Entry
17 of Interim and Final Orders (I) Authorizing, But Not
18 Directing, the Debtors to (A) Maintain and Administer
19 Customer Programs and (B) Honor Related Prepetition
20 Obligations to Customers and (II) Authorizing, But Not
21 Directing, Financial Institutions to Honor All Related
22 Payment Requests) Filed by Emanuel C. Grillo on behalf of
23 Personal Communications Devices, LLC [8]

1 Motion for Joint Administration of Case 13-74303 with
2 Case(s) 13-74304 Filed by Emanuel C. Grillo on behalf of
3 Personal Communications Devices, LLC [3]
4

5 Motion to Authorize/Direct (Motion of the Debtors for an
6 Order (1) Extending the Debtors' Time to File Schedules and
7 Statement of Financial Affairs, (2) Authorizing the Debt to
8 File a Consolidated List of the Debtors 30 Largest Unsecured
9 Creditors, (3) Waiving the Requirement of E.D.N.Y. 1007-1
10 That the Debtors File a List of Creditors, (4) Authorizing
11 the Debtors to Mail Initial Notices and (5) Authorizing the
12 Debtors to Use Prepetition Business Forms) Filed by Emanuel
13 C. Grillo on behalf of Personal Communications Devices, LLC
14 [9]
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16 Hearing on Application to Employ Epiq Bankruptcy Solutions,
17 LLC, as Notice and Claims Agent (Application of the Debtors
18 for Entry of an Order Authorizing the Employment and
19 Retention) Filed by Emanuel C. Grillo on behalf of Personal
20 Communications Devices, LLC [12]
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1 Motion to Authorize/Direct (Ex Parte Motion of the Debtors
2 to Shorten Time with Respect to Hearing on Debtors' Motion
3 for Entry of Order Approving Bidding Procedures Relating to
4 Sale of the Debtors' Assets; (II) Approving Bid Procedures;
5 (III) Scheduling a Hearing to Consider the Sale; (IV)
6 Approving the Form and Manner of Notice of Sale by Auction;
7 (V) Establishing Procedures for Noticing and Determining
8 Cure Amounts; and (VI) Granting Related Relief) Filed by
9 Emanuel C. Grillo on behalf of Personal Communications
10 Devices, LLC (RE: Related document(s) 10 Motion to Sell
11 filed by Debtor Personal Communications Devices, LLC) [11]

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25 Transcribed by: Sherri L. Breach, CERT*D-397

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17 APPEARING TELEPHONICALLY:

18 GARY EISENBERG

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20 JASPREET MAYALL

21 ERIC WILSON

22 JAMIE WELTON

23 KIMBERLY COHEN

24 MARK HAUT
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P R O C E E D I N G S

THE CLERK: Case Number 13-74303, Personal
Communications Device, LLC.

THE COURT: I'll take appearances, please, first
in the courtroom.

MR. GRILLO: Sure. If I may begin, Your Honor,
Emanuel Grillo, a member of the firm of Goodwin Procter, LLB
-- LLP, proposed counsel -- co-counsel to the debtors and
debtors-in-possession. With me is our co-counsel, Mr. Frank
Oswald.

THE CLERK: Sir, you have to state your name for
the record.

MR. OSWALD: Good morning, Your Honor. Frank
Oswald, Togut, Segal & Segal. As Mr. Grillo said, we're
proposed co-counsel for the debtors.

THE COURT: All right.

MR. LABOV: Good morning, Your Honor. Paul Labov,
Edwards, Wildman, Palmer on behalf of JPMorgan Chase. With
me this morning, Your Honor, are Dave Ruediger and Charlie
Glerum, both of Edward, Wildman, Palmer. Mr. Ruediger has
been moved in. Mr. Glerum, we anticipate moving him in
shortly after the hearing.

MR. GLERUM: Good morning, Your Honor.

MR. RUEDIGER: Good morning.

THE COURT: Good morning. For Chase.

1 MR. GLERUM: For Chase.

2 MR. OSWALD: Yes.

3 THE COURT: All right.

4 MR. DIMINO: Good morning, Judge. Alfred Dimino
5 for the Office of the United States Trustee.

6 MR. WIELEBINSKI: Good morning, Your Honor. I'm
7 Joe Wielebinski. I'm with the law firm of Munsch Hardt in
8 Dallas, Texas. I think you entered an order this morning on
9 our appearance. With me is my local counsel Adam Rosen with
10 Silverman Acampora.

11 Mr. ROSEN: Good morning, Your Honor. Adam Rosen,
12 Silverman Acampora.

13 THE COURT: Okay. And you all are in for --

14 MR. WIELEBINSKI: I'm sorry, Your Honor. We
15 represent the Quality One Wireless, the --

16 THE COURT: Stalking horse.

17 MR. WIELEBINSKI: Yes, sir.

18 THE COURT: All right. Any other appearances in
19 the courtroom?

20 MR. GOLDBERG: Good morning, Your Honor. Adam
21 Goldberg of Latham & Watkins on behalf of DLG Investment
22 Partners, which is also referred to as Credit Suisse in
23 these cases.

24 UNIDENTIFIED SPEAKER: I think we're to the phone
25 now.

1 THE COURT: All right. I'll take appearances on
2 the telephone.

3 MR. EISENBERG: Gary Eisenberg, Perkins Coie on
4 behalf of HTC.

5 THE COURT: Others on the phone.

6 MR. WELTON: Jamie Welton --

7 MR. TUCKER: Max --

8 MR. WELTON: Go ahead.

9 MR. TUCKER: Max Tucker on behalf of Pine Bridge
10 Investments.

11 MR. MAYALL: Good morning, Your Honor. Jaspreet
12 Mayall, Certilman Balin, on behalf of Reliance
13 Communications, LLC.

14 MR. WILSON: Good morning, Your Honor. Eric
15 Wilson of Kelley Drye just monitoring.

16 MR. WELTON: Jamie Welton with Lackey Hershman on
17 behalf of the Richards Group, Inc., and Richards Partners.

18 MS. COHEN: Kimberly Cohen on behalf of U.S. Bank.

19 MR. HAUT: Mark Haut from Norton, Rose Fulbright,
20 just monitoring.

21 THE COURT: Anyone else?

22 All right. Mr. Grillo.

23 MR. GRILLO: Yes. Thank you, Your Honor.

24 Again, Emanuel Grillo of the firm Goodwin Procter,
25 proposed co-counsel to the debtors and debtors-in-

1 possession.

2 First, Your Honor, a thank you to the Court and to
3 your chambers for accommodating us this morning. Having
4 filed the case very late Monday night, we were pleased that
5 the Court was able to hear us for our first day hearings
6 this morning. So a thanks goes to the Court to begin.

7 Before I get to the background to the filings, I
8 just would like to introduce a couple of other people who
9 are in the courtroom with us today. George Appling, the CEO
10 of Personal Communications. If you could maybe stand,
11 George, please. With George is our CFO and affiant today,
12 Mr. Ray Kunzmann, and our chief operating officer, Jorge
13 Garcia.

14 THE COURT: All right.

15 MR. GRILLO: Okay. Your Honor, we're here today
16 as the culmination of approximately six to nine months of
17 negotiations regarding the re -- ultimate restructuring of
18 Personal Communications Devices.

19 By way of background, PCD is located in
20 neighboring Hauppauge, approximately six miles away. We
21 employ 189 people, 130 of which are employed here locally.

22 What PCD does is it distributes programs and
23 services wireless communication devices. It effectively
24 serves as an intermediary for the domestic wireless
25 carriers, the AT&T, the Verizon's, the Sprint's of the

1 world, and the smaller foreign device suppliers and
2 producers of the products, so Walway (ph), Pantech, Alcatel
3 and others.

4 In a variety of shapes and forms the company goes
5 back to 1984 and was acquired by affiliates of Pine Bridge
6 Investments in 2008. There are several non-debtor entities
7 that -- that the operating entity owns, and those are
8 located in Canada, Brazil and Mexico. They're not the
9 subject of any proceeding, and as set forth in the Kunzmann
10 affidavit, they don't have any material operations or
11 anything like that. Some have a little bit of inventory.
12 There are a few employees and we'll talk about that in the
13 context of the first day hearings.

14 There are five -- five classes of interests that
15 are outstanding. One class of interests is held by the
16 former CEO, Mr. Philip Christopher. We'll talk about Mr.
17 Christopher a little bit when we describe some of the
18 background leading up to the cases.

19 In terms of the company's financial condition, in
20 2012 PCD generated approximately \$1.6 billion (sic) in
21 revenue, but suffered a loss of 16.9 million. Historically,
22 it had generated EBITDA of approximately \$50 million a year.
23 And its capital structure, as it exists right now, is that
24 we have a first lien loan which is led by JPMorgan Chase as
25 administrative agent for which the Edwards Wildman firm is

1 here on behalf of counsel, and that's approximately \$30
2 million outstanding. The loan balance moves from day to day
3 depending on receipts and collections.

4 The -- there's also second lien debt in the
5 approximate aggregate amount of \$71 million, and that's held
6 -- well, U.S. Bank is the agent, and I heard their counsel
7 on the phone. And counsel for DLJ Investment Partners, who
8 came up and introduced himself before, Mr. Goldberg, is here
9 and, also, Pine Bridge has counsel on the phone as well, Mr.
10 Tucker. And, again, that -- that amount is \$71 million.

11 There's also significant trade debt in these
12 cases, Your Honor. The trade debt is probably subject --
13 while subject to some disputes and contingencies and the
14 like, it's probably about \$200 million in the aggregate.

15 When we talk about what the reasons for the filing
16 were, there's been a shift in the wireless communications
17 device market. Over the last couple of years the market has
18 really concentrated -- and I guess as a user of the cell
19 phone I'm probably, I guess, you know, one of the reasons
20 why as I carry my Apple device and the client is probably
21 not very happy about that. But I'm stuck under a contract
22 and there's nothing I can do for -- for the moment. But in
23 any event, the mobile device market has shifted whereas the
24 dominant players, Apple and Samsung, presently hold about 76
25 percent of the market.

1 PCD bears for its suppliers inventory risk and in
2 2012 accumulated significantly higher amounts of inventory
3 when the inventory for the devices that it sells did not
4 move in the ways that it had moved historically. The
5 difficulties of the company were compounded by the departure
6 of its prior CEO, Mr. Philip Christopher, in 2 -- September
7 of 2012 who took a third of the workforce with him and
8 attempted to set up a competing entity at that time. It
9 forced the company to take a number of steps, including the
10 implementation of stay bonuses and the like to keep a core
11 of the company together.

12 But, ultimately, what this case is about -- what
13 these cases are about, Your Honor, is that we are here to
14 hopefully implement a sale. We have spent a significant
15 amount of time marketing the company, going back to February
16 of this year, to try and find a buyer to save the enterprise
17 value, to preserve the jobs, and have the company continue
18 at least in some form on a go forward basis.

19 What we won't present today, but we'll ask for a
20 hearing date on, is a bid procedures hearing a couple of
21 weeks out and then look to have an extended bidding process
22 for about 30 days after that. Again, we'll ask for a
23 hearing date for that motion at the appropriate time. But
24 the bottom line is that's what this case really comes down
25 to.

1 Under its current capital structure, the company
2 wasn't going to be able to continue to exist and really
3 needed to start anew. We were fortunate that we have
4 identified and signed an agreement with a stalking horse
5 buyer. And, again, at the appropriate time we'll present
6 the specifics on that deal, but that's really the crux of
7 why we're before the Court today.

8 We have a number of -- of motions, typical sort of
9 first day pleadings that we would like Your Honor to
10 consider. They've been filed with the Court. We sent a
11 binder of those pleadings in substantially final form to the
12 U.S. Trustee on Friday. We contact -- we spoke with Mr.
13 Dimino yesterday. My colleague, Matt Curro, spoke with Mr.
14 Dimino. We have received some comments. I think we've
15 accommodated pretty much everything. I'm sure Mr. Dimino,
16 if he has any continuing issues, we will -- we'll -- we'll
17 hear about that today.

18 But, again, there's a series of first day motions
19 and I would like to take the Court through them, if -- if
20 the Court would like me to do so, or if the Court has
21 questions about the background. I should note that the
22 background is summarized in actually more detail in the
23 Kunzmann affidavit. At the end of the hearing I'll ask the
24 Court to accept that as a proffer of evidence, and Mr.
25 Kunzmann is in the courtroom if parties would look to cross-

1 examine him. But we would offer that up as his direct
2 testimony at the appropriate time.

3 THE COURT: Just very basic. In terms of the
4 business structure, there's no -- the debtor doesn't go into
5 office or other environments and install equipment. It --
6 it sells handheld devices and then arranges for service with
7 carriers who are FCC and state authorized to provide what
8 used to be called dial tone.

9 MR. GRILLO: I think that's correct, Your Honor.
10 I -- yes. We basically import the devices into the U.S.
11 And so when you go to your local Verizon or AT&T store and
12 they have a display of all of their devices, once you get
13 past the Apples and the Samsungs you see all of our products
14 that are out there. We reserve slots with carriers, you
15 know, for purposes of display, you know, as any other sort
16 of wholesaler would, in effect, and we provide servicing for
17 that and we also provide programming for those devices.

18 And, effectively, by operating as an intermediary,
19 it relieves the burden on the carriers who don't have to
20 deal with as many producers and it facilitates, you know,
21 for the -- for the suppliers it facilitates access to the
22 U.S. markets. And that's really the core of the business.

23 THE COURT: All right.

24 All right. Well, why don't we start with the
25 easier of the motions.

1 MR. GRILLO: That would be joint administration in
2 my book, Your Honor, if I may.

3 THE COURT: All right.

4 MR. GRILLO: Your Honor, we have -- we have two
5 cases, Personal Communications Devices, LLC, and Personal
6 Communication Devices Holding, LLC. Holdings is the 100
7 percent owner of Devices. We -- you know, as the operations
8 essentially take place through Devices, LLC, we think it
9 makes sense to administer the two cases together, and we
10 would submit that motion for Your Honor's consideration.

11 THE COURT: All right.

12 Mr. Dimino.

13 MR. DIMINO: Judge, the United States Trustee has
14 reviewed the application and has no objection to the entry
15 of that order.

16 THE COURT: All right. All right. Then the Court
17 will enter an order authorizing joint administration. So --

18 MR. GRILLO: We're off to a good start. Thank
19 you, Your Honor.

20 THE COURT: You're doing great so far. You're one
21 for one.

22 (Laughter)

23 MR. GRILLO: Okay. Thank you, Your Honor.

24 THE COURT: Pick -- pick the next easiest motion
25 on the --

1 (Laughter)

2 THE COURT: -- on the menu and I won't lock you
3 into a two-year contract on it.

4 MR. GRILLO: Excellent.

5 How about I take an important motion for our
6 company, which is the wage motion, which I -- I don't think
7 is controversial in any way.

8 Your Honor, the wage motion is -- is sort of a
9 typical wage motion in the sense that it offers the -- the
10 debtors offer comprehensive wages and benefits packages to
11 their employees who are obviously critical to our success.
12 We're looking to maintain the wages and benefits without --
13 without interruption.

14 What we're seeking to do is to pay in the
15 aggregate, and this is all included as part of the budget,
16 \$512,000 in prepetition amounts for accrued, but unpaid
17 wages, reimbursable expenses due to employees, and amounts
18 owed to independent contractors and temporary workers. The
19 independent contractors are individuals, Your Honor, who do
20 work not on an employee basis, but through contract work.
21 And we would look to maintain that.

22 We note, Your Honor, that this amount is different
23 than what we put in the motion. We had anticipated filing
24 earlier on Monday, and so we have now increased it by
25 approximately \$55,000 for the additional day of wages that

1 accrued because we didn't file until midnight on Monday as
2 opposed to when we thought we were going to file, which was,
3 you know, before the opening of business. So that's a -- a
4 modification.

5 I would note, Your Honor, the debtors are not
6 seeking to pay any single employee in excess of the
7 507(a)(4) priority cap, and we would submit this motion to
8 Your Honor for your consideration.

9 THE COURT: All right.

10 Mr. Dimino.

11 MR. DIMINO: Judge, the only question I have is in
12 terms of the payments and the individuals who are receiving
13 payments, are any of those officers and directors?

14 MR. GRILLO: Yes. I believe there -- the officers
15 and directors are included.

16 MR. DIMINO: I would like to -- I have no
17 objection to the payment and the other relief that's
18 requested with regard to all of the employees other than the
19 officers and directors until I can get a breakdown of just
20 who they are and how much they're getting.

21 MR. GRILLO: We're happy to submit that breakdown
22 to the U.S. Trustee, Your Honor.

23 MR. DIMINO: And assuming that we have no problem
24 with that, we can submit the order.

25 THE COURT: All right. And, again, all -- even at

1 the officer and director level, all individuals are within
2 the 507(a)(4) cap.

3 MR. GRILLO: Inclusive of the officers and
4 directors. Yes. That's --

5 THE COURT: Including.

6 MR. GRILLO: -- correct, Your Honor.

7 THE COURT: All right. Any other party in
8 interest wish to be heard on the wage motion?

9 All right. Then, again, subject to the breakdown
10 of the officer/director, if you'll go ahead and provide that
11 in -- well, any reason not to put that up on the docket of
12 the case?

13 MR. GRILLO: To --

14 THE COURT: In other words, not to --

15 MR. GRILLO: -- to schedule --

16 THE COURT: -- go ahead and file that schedule,
17 just put it up on the docket and then any party in interest
18 can review it.

19 MR. GRILLO: I would rather not disclose
20 individual salary -- I mean, I'm happy to -- if -- if
21 somebody wants to ask me for it, I'm happy to provide it,
22 Your Honor. I mean, anyone can -- you know, I would just
23 rather not post individual's salaries on the docket, if I
24 may.

25 THE COURT: All right. Then go ahead and send

1 that breakdown to the U.S. Trustee's Office.

2 MR. GRILLO: Of course.

3 THE COURT: And then when -- assuming they've
4 signed off on that aspect of it, when you upload the order
5 -- I know there's already been an order submitted, but go
6 ahead and upload the order showing an S/approved for entry
7 by the U.S. Trustee's Office. That way the Court knows
8 they've made their review and they have no objection. If
9 there is an objection to that portion of the wage motion,
10 then you'll need to notify the Court and we'll decide how to
11 take that up, although most likely, if there is an objection
12 to it, then I'll take that part of the wage motion up at the
13 final hearing on the DIP loan.

14 MR. GRILLO: Understood, Your Honor.

15 THE COURT: All right. It's granted per the
16 terms.

17 (Pause)

18 THE COURT: And for -- for purposes of the
19 debtors' internal workings, if the debtors want to submit an
20 order now that authorizes the prepetition wage and
21 compensation benefit payments to all other than the officers
22 and directors, we can enter that order now awaiting entry of
23 the other order.

24 MR. GRILLO: Sure.

25 THE COURT: Which -- whichever is preferable from

1 the debtors' standpoint.

2 MR. GRILLO: I'm sure we'll submit an order
3 quickly. We'll carve out the officers and directors, and
4 then we'll work with the U.S. Trustee and make sure that we
5 can submit a supplemental order on that --

6 THE COURT: All right. That --

7 MR. GRILLO: -- if that works.

8 THE COURT: -- will be fine. All right.

9 You want to do cash management?

10 MR. GRILLO: That's where I was going to go next,
11 Your Honor, if I may.

12 THE COURT: All right.

13 MR. GRILLO: Your Honor, this -- again, sort of
14 typical first day motion to maintain the debtors'
15 centralized cash management. The cash -- centralized cash
16 management system is an important element, one, of the
17 operations of the business and, two, the relationship
18 between the debtors and its senior lenders in connection
19 with the asset based facility that forms the premise for the
20 post-petition financing.

21 With respect to comments that have been received
22 with the order, we understand that the U.S. Trustee has
23 asked that we mark our accounts as debtor-in-possession
24 accounts. We've made that change to the uploaded ECF
25 system, the order that's there. I would defer to Mr. Dimino

1 to see whether or not that resolves any issues that he may
2 have, but we certainly are prepared to mark our -- our
3 payment -- our checks, excuse me, and our invoices as
4 debtor-in-possession.

5 THE COURT: All right.

6 Mr. Dimino.

7 MR. DIMINO: Judge, that is -- that is fine with
8 the United States Trustee and that's what we did request.

9 The motion, however -- there are a number of these
10 motions and sometimes they -- they appear to overlap. With
11 regard to the business forms, that is acceptable. There's
12 also the request in terms of the bank accounts and the cash
13 management, and if that's included in this motion --

14 MR. GRILLO: Yes.

15 MR. DIMINO: -- then what we have requested and I
16 believe we have an agreement is that we will not consent to
17 the waiver of the 345 requirements, but we have agreed to
18 defer that for the 30 days or so --

19 MR. GRILLO: That's correct. Yes.

20 MR. DIMINO: -- that has been requested. So the
21 debtor will not be required to change over the bank accounts
22 to the debtor-in-possession accounts. They may continue to
23 operate and use the existing accounts, and we will revisit
24 that issue during the 30 day period from now.

25 THE COURT: All right. So the checks will all be

1 legended (sic) debtor-in-possession, but not the business
2 forms?

3 MR. DIMINO: No. The business forms as well.

4 THE COURT: The business forms as well?

5 MR. GRILLO: That's fine.

6 THE COURT: All right.

7 MR. DIMINO: They won't be -- it won't be
8 necessary for them to move -- physically move the accounts
9 to the new debtor-in-possession accounts and it won't be
10 necessary to go out and have new forms printed. They can
11 utilize whatever manual or other means to alter the existing
12 ones.

13 THE COURT: All right. And then we'll need to
14 visit or revisit the 345 issue at a later hearing.

15 MR. GRILLO: That's --

16 MR. DIMINO: That's correct.

17 MR. GRILLO: -- correct.

18 THE COURT: But it's otherwise operating status
19 quo.

20 MR. GRILLO: Right. Your Honor, I would note that
21 our -- our accounts are with JPMorgan Chase, which is an
22 approved depository for -- for -- under 345.

23 THE COURT: I was waiting for someone to tell me
24 if JPMorgan Chase was not considered to be a safe depository
25 and I --

1 (Laughter)

2 THE COURT: -- I wasn't -- you never know what
3 you're going to hear at a hearing. So -- all right.

4 So then for carry along purposes, because we need
5 to docket control these issues, on that -- since that is a
6 portion of the cash management motion I will -- I will
7 docket that we're carrying that portion of the motion to the
8 next hearing which will be on -- the final hearing on the
9 DIP facility and, to not shock anybody, on the bid
10 procedures motion as well. And we'll talk about the date
11 for that.

12 But the Court anticipates that would be on
13 September the 4th in the morning.

14 MR. DIMINO: Judge, the United States Trustee
15 would not object to language in the order that would grant
16 the debtors the extension of time that they requested.

17 MR. GRILLO: We appreciate that and we'll conform
18 the order accordingly, Your Honor.

19 THE COURT: All right. Yeah. 10:00.

20 Let's -- can we jump to the utility motion and
21 come back -- come back to the DIP motion at the end?

22 MR. GRILLO: That's exactly --

23 THE COURT: Save --

24 MR. GRILLO: My --

25 THE COURT: -- save this --

1 MR. GRILLO: -- my outline follows yours, Your
2 Honor.

3 THE COURT: For those of you who are following
4 along --

5 MR. GRILLO: -- and I didn't even submit it that
6 way.

7 THE COURT: -- we're going to build the suspense.
8 It's going to crescendo at the --

9 (Laughter)

10 THE COURT: -- at the DIP hearing.

11 MR. GRILLO: Fair enough, Your Honor.

12 The utilities motion made under Section 366 of the
13 Bankruptcy Code seeks to prohibit the utility companies from
14 discontinuing service.

15 With that, Your Honor, we would note that the
16 debtors spend approximately \$43,000 per month on utilities.
17 The motion seeks to deem a deposit equal to 50 percent of
18 the debtors' estimated monthly utility bill as adequate
19 assurance and to establish procedures by which the utility
20 companies can contest their adequate assurance payments.

21 THE COURT: What's -- what's the contemplated
22 objection period for the utility companies? If I enter the
23 order now -- and Mr. Dimino is, I think, about to tell me
24 that his office doesn't view the utility motion as a first
25 day motion. So I'll let him say that and then I'll --

1 (Laughter)

2 THE COURT: -- then we'll come back to it.

3 MR. DIMINO: Your Honor, the statute itself gives
4 a period of time and that it's not necessary to do that
5 today. I believe it's the discretion of the Court to
6 determine.

7 THE COURT: All right.

8 MR. GRILLO: We -- we've submitted --

9 THE COURT: It would seem --

10 MR. GRILLO: -- 30 days, Your Honor, which --

11 THE COURT: All right. Well, the -- it -- the
12 Court's view is no less than 20, so my math is 30 is no less
13 than 20. So a 30 day objection window would be fine.

14 So I'll grant the utility motion, again, with the
15 caveat that any of the utility providers will have 30 days
16 to object to the proposed provision of adequate assurance.
17 And those are cash money deposits.

18 MR. GRILLO: Correct.

19 THE COURT: All right.

20 MR. GRILLO: Correct.

21 THE COURT: Customer programs or do you want to go
22 to --

23 MR. GRILLO: We're -- I'm -- we're in sync today,
24 Your Honor.

25 The customer programs --

1 THE COURT: They gave us a list of the order of
2 the motions that everybody should have on the docket, so
3 it's -- there's --

4 MR. GRILLO: Exactly.

5 THE COURT: -- there's no greater magic than that.

6 MR. GRILLO: I was hoping we would keep that
7 between us, Your Honor, but if you want to share that with
8 everyone.

9 THE COURT: Well --

10 (Laughter)

11 THE COURT: -- in the interest of full disclosure,
12 we're --

13 MR. GRILLO: Absolutely.

14 THE COURT: -- going on the same sheet of music so
15 far.

16 MR. GRILLO: Excellent.

17 With respect to the customer programs, the motion
18 seeks to honor certain prepetition customer programs which
19 include warranty services provided by the debtors and other
20 programs. These programs are critical to our ability to
21 continue to service the wireless carriers as the customers
22 rely on PCD to provide uninterrupted warranty and other
23 services.

24 We have two sets of programs: A market
25 development fund program where PCD shares the cost with

1 certain customers of advertising and other incentive
2 programs just per a demand for services. These programs
3 depend or change depending on the carrier from time to time.

4 We also provide warranty services with certain
5 third party service providers without which we couldn't
6 provide our warranty services. Losing these vendors would
7 cause a major disruption to PCD's warranty services and
8 protect -- and would damage the enterprise value of our
9 business.

10 What we're seeking to do as part of this, Your
11 Honor, is pay up to a million dollars on account of the
12 customer programs during the period between the interim and
13 the final order. And we would submit that motion for Your
14 Honor's consideration subject to whether anyone else has any
15 thoughts.

16 THE COURT: All right.

17 Mr. Dimino.

18 MR. DIMINO: Judge, the United States Trustee has
19 no objection. It appears to be a reasonable request to
20 continue the business in its normal form and, hopefully,
21 continue the value of the -- of the business.

22 THE COURT: All right. Any other party in
23 interest on the customer program warranty motion?

24 So what is the contemplated time frame, then? You
25 stated about a million dollars until another hearing date.

1 What is the -- what's the contemplated time frame?

2 MR. GRILLO: I think we were contemplating sort of
3 out -- if Your Honor were to set like an omnibus hearing or
4 something like that approximately 30 days out, I think that
5 -- 21 days?

6 UNIDENTIFIED SPEAKER: Is the million dollars.

7 MR. GRILLO: The million dollars gets us through
8 21 days, Your Honor.

9 THE COURT: All right. So then it would probably
10 make sense to carry the balance of the customer program
11 motion to the September -- to the September 4. That's the
12 next contemplated date?

13 MR. GRILLO: That would be the next contemplated
14 date in our minds, Your Honor. Yes.

15 THE COURT: All right.

16 All right. So then the Court will grant the
17 customer program motion authorizing up to the million
18 dollars of interim expense pending further hearing and that
19 will be on September 4th. That will be at 10:00, by the
20 way.

21 MR. GRILLO: Okay.

22 THE COURT: September 4th at ten, and, again,
23 having injected that the Court is aware of two sets of
24 holidays the first week in September and we're trying to
25 bridge you in in that first week given the rest of the

1 dynamics of the case.

2 So the plan is to get you all in early on
3 September 4th, have everybody out back on the roads to get
4 to wherever they need to be before the sun falls.

5 MR. GRILLO: We appreciate Your Honor's
6 accommodation as far as that goes. Thank you so much.

7 THE COURT: All right.

8 (Pause)

9 THE COURT: You want to jump to 12 and take the
10 schedule extensions?

11 MR. GRILLO: Yes.

12 THE COURT: All right.

13 MR. GRILLO: The scheduling extensions are among
14 the ministerial motions that we have made to the Court.
15 We've obviously filed a consolidated list of creditors and
16 would look for another -- I think we've agreed to 30 days
17 with the U.S. Trustee's Office.

18 UNIDENTIFIED SPEAKER: September 16th.

19 MR. GRILLO: September 16th for the filing of our
20 schedules.

21 THE COURT: September 16th for the schedules?

22 MR. GRILLO: Yes.

23 THE COURT: All right. Mr. Dimino.

24 MR. DIMINO: Judge, that -- that date is fine. We
25 have a 341 meeting scheduled for the 20th of September, so

1 that would give us and other creditors and hopefully a
2 committee ample opportunity to review them in preparation
3 for the 341 meeting.

4 THE COURT: All right. So then the motion for
5 extension of time of the debtors' schedules is granted as
6 modified. Schedules to be filed by September 16, 2013.

7 MR. GRILLO: Thank you, Your Honor. And that's --
8 that's in the up -- the form of the uploaded order. That
9 agreement has already been reached in the one that we've
10 already submitted.

11 THE COURT: All right. Very well.

12 Epiq.

13 (Pause)

14 THE COURT: All right. You want to take up the
15 Epiq motion?

16 MR. GRILLO: Sure.

17 Your Honor, given the size and the scope of the
18 case and the number of creditors we expect somewhere to be
19 1,000 -- between 1,000 and 2,000 creditors. For that
20 reason, Your Honor, we have sought the Court's authorization
21 to retain Epiq Bankruptcy Solutions as our notice and claims
22 agent under 28 U.S.C. Section 156(c).

23 Prior to the filing of the case, we consulted with
24 the clerk's office and received and incorporated their
25 comments into the 156 application and order prior to filing.

1 Epiq has a long history of working with this Court and
2 others from what we understand. We also submitted this to a
3 bid process before the bankruptcy case. We sought three
4 bids which were substantially identical from three separate
5 providers of this service and ultimately settled on Epiq to
6 provide these services to the debtors.

7 The debtors will also separately file an
8 application under 327(e) seeking authorization to retain and
9 employ them as the administrative advisor, to the extent
10 that we need administrative tasks performed outside the
11 scope of 28 U.S.C. 156. And I imagine what we'll do is
12 we'll have all of the retention applications on at a later
13 hearing and we would bring those forward and we'll bring
14 Epiq along as part of that as well.

15 THE COURT: All right.

16 Mr. Dimino.

17 MR. DIMINO: Judge, the United States Trustee has
18 no objection.

19 THE COURT: All right. Then the Court will grant
20 the motion to retain Epiq as the claims agent. That order
21 has been uploaded?

22 MR. GRILLO: I believe it has.

23 THE COURT: All right.

24 All right. Why don't we go to Number 10, then,
25 the motion to shorten -- or establish a hearing date for bid

1 procedures?

2 MR. GRILLO: Yes.

3 THE COURT: Did you have a different order?

4 MR. GRILLO: I did not, Your Honor.

5 THE COURT: All right.

6 MR. GRILLO: Item 10, Your Honor, I think, took
7 some of the surprise out of this by offering us September
8 4th, so I think that's -- I think that's fine for the
9 hearing and it's consistent with what the parties have
10 indicated.

11 I would just ask the Court to ask the parties if
12 anyone has any objection to that date as there are timelines
13 that are set forth both in the DIP papers and in the
14 application itself. I would just like to get the formal
15 consent of our DIP lenders and our bidder to make sure that
16 date works.

17 THE COURT: All right. We'll start in the
18 courtroom, then. Any -- with -- with the following
19 predicate, that I have a date after September 4th, but not
20 before, does anyone object to the bid procedure hearing
21 being on September 4th?

22 MR. GLERUM: Charlie Glerum, Your Honor, for
23 JPMorgan Chase. That's fine with us so long as Quality One
24 is onboard with the extension as well.

25 Thank you.

1 THE COURT: All right. Mr. Wielebinski.

2 MR. WIELEBINSKI: Your Honor, I didn't hear what
3 you said right after Mr. Grillo talked. I had started
4 whispering to him. Did you say you're not available --

5 THE COURT: I have a date after September 4th, but
6 not before. So that's the predicate to the hearing being on
7 September 4th in the morning.

8 MR. WIELEBINSKI: We -- we appreciate you setting
9 it on September 4th, Your Honor. That will work for us at
10 10:00. Yes.

11 THE COURT: All right.

12 Other -- any other party in interest in the
13 courtroom?

14 All right. And on the telephone?

15 MR. EISENBERG: Your Honor, this is Gary Eisenberg
16 from Perkins Coie. We don't have any issue with the setting
17 of the date on -- on September 4th. I mean, obviously, we
18 would prefer a little more time, but I understand that given
19 the exigencies if we're the DIP lender and -- and everybody
20 else's, that that may not be realistic.

21 The question that I have is whether that will
22 change the objection deadline date. I think originally it
23 was proposed to be the 29th and I was wondering if w would
24 be able to get the extra day on that.

25 MR. GRILLO: We have no objection to extending the

1 objection date consistent with the hearing, Your Honor.

2 THE COURT: All right. Well, we're going to need
3 objections filed by no later than noon on August 30th. I
4 think the request was to push the objection deadline back
5 from the 29th to the 30th, but we would like to have those
6 objections filed by noon on the 30th because if there are
7 any, we obviously need -- you all need time to look at them.
8 We need time to review them as well. So we'll set an
9 objection deadline at noon on August 30th.

10 Is there any additional service that the debtor
11 contemplates making on that motion? There was limited
12 service on the first days, or did the -- did the debtors
13 serve out the bid procedure motion more broadly?

14 MR. GRILLO: Not as of -- we did serve it --

15 UNIDENTIFIED SPEAKER: It ended up being served.

16 MR. GRILLO: I'm sorry.

17 UNIDENTIFIED SPEAKER: It ended up being served.

18 MR. GRILLO: It ended up being served to everyone.

19 Okay. Everyone -- the top 30 has it?

20 UNIDENTIFIED SPEAKER: The top 30.

21 MR. GRILLO: The top 30 have it, Your Honor.

22 THE COURT: All right.

23 MR. GRILLO: So we did send it out and we will
24 send out the notice to -- we will give it to Epiq to get
25 that out to all creditors. We'll do that today.

1 THE COURT: All right. Mr. Dimino.

2 MR. DIMINO: Judge, just to make the Court aware,
3 this morning my office is in the process of sending out
4 solicitation for an organizational meeting for the
5 creditors' committee to be held next Monday at 11 a.m. in my
6 office. We would anticipate that (indiscernible) are
7 unaware of that we would be able to form a committee
8 hopefully and that committee would then have time to also
9 review --

10 UNIDENTIFIED SPEAKER: Hello?

11 MR. DIMINO: -- and advise the Court when we come
12 back.

13 THE COURT: All right. So that -- that formation
14 meeting is this Monday, August 26th?

15 MR. DIMINO: The 26th at 11 a.m. in Room 561 here
16 in this building.

17 THE COURT: All right. All right. So then go
18 ahead and get the notice out to all creditors and parties in
19 interest through Epiq. Bid procedure hearing September 4 at
20 10; objection deadline August 30th at noon; and then if a
21 committee forms and they ask for more time we'll need to
22 figure out how to address that.

23 MR. GRILLO: We will.

24 THE COURT: All right.

25 So then go ahead and also submit an order on the

1 shortening time motion.

2 MR. GRILLO: We will.

3 THE COURT: All right.

4 (Pause)

5 THE COURT: All right. That, for today, leaves us
6 with the DIP motion?

7 MR. GRILLO: I think it does. I think we have --
8 Your Honor, just since we're doing dates, if I may, I
9 presume after the formation of a committee we're going to
10 want to have dates for the retention hearing. We have a
11 shippers and warehouseman's motion and the like. Just to
12 sort of jump ahead a little bit with the -- with the
13 auction, we're expecting to ask for about 30 days. So my
14 guess is if Your Honor wants to have an omnibus hearing
15 where things would ultimately be carried to, if we want to
16 set that now and I can put the retentions on for that date.

17 I just -- you know, it would be separate from the
18 auction, just so that this way --

19 THE COURT: We're presently looking at October 16
20 as a hearing to potentially confirm the results of the
21 auction sale. That's within a couple of days of the
22 anticipated, or at least requested timeline for the parties,
23 but if -- for the parties' benefit and the interest of going
24 green, I'm contemplating holding those hearings in Brooklyn.

25 MR. GRILLO: Okay.

1 THE COURT: So that you all can travel less and
2 can --

3 MR. GRILLO: I live 25 minutes from here, Your
4 Honor. I'm happy to come here.

5 THE COURT: Well, if you do it by show --

6 MR. GRILLO: But I think for everyone else --

7 THE COURT: -- of hands --

8 MR. GRILLO: -- it's -- yes.

9 THE COURT: -- who are in the city. But it seems
10 that this would be a case that would be staffed largely out
11 of the city and/or through --

12 MR. GRILLO: It is.

13 THE COURT: -- the airports and, again, given that
14 -- the number of traveling attorneys I'm -- I'm happy to go
15 to Brooklyn for those hearings. I'm happy to have them
16 here, also. So --

17 MR. GRILLO: I think --

18 UNIDENTIFIED SPEAKER: That would be great.

19 MR. GRILLO: I think I would ask the parties --

20 UNIDENTIFIED SPEAKER: Two hours for me, but don't
21 --

22 (Laughter)

23 UNIDENTIFIED SPEAKER: -- don't worry about my
24 comfort.

25 MR. GLERUM: Whatever's convenient for the Court

1 will be fine with JPMorgan. Thank you.

2 THE COURT: All right.

3 MR. WIELEBINSKI: Your Honor, is there any way
4 that that hearing on the sale could be accelerated; that --
5 it is a few days difference, but we are desperately trying
6 to keep to the very heavily negotiated time deadline, time
7 schedule that -- that we established in the APA. I think
8 what I have, according to my calculation, is the last day
9 for the hearing, the agreed upon hopeful deadline would be
10 October 8th.

11 THE COURT: Isn't that also proposed as the
12 auction date itself?

13 MR. WIELEBINSKI: I -- I think the auction date,
14 Your Honor -- again, according to my timeline -- would be
15 October 3rd as the outside date.

16 Now you -- you have moved the hearing on bidding
17 procedures by one day, so I -- I guess my dates would move
18 up one more day, too. So instead of October 8th, it would
19 be October 9th and October 4th.

20 THE COURT: All right. Hang on one second.

21 (Pause)

22 THE COURT: All right. I can -- I can move those
23 hearings up to October 10th.

24 MR. WIELEBINSKI: Your Honor, I -- I think that
25 would be much better and I appreciate that accommodation.

1 THE COURT: Well, it doesn't --

2 MR. WIELEBINSKI: And Brooklyn --

3 THE COURT: -- mean I'm going to approve the sale.

4 It's just --

5 (Laughter)

6 MR. WIELEBINSKI: That I understand, Your Honor.

7 Brooklyn's fine with us. It probably would save some time
8 and my clients are also out of town.

9 THE COURT: All right. So --

10 UNIDENTIFIED SPEAKER: That would be great.

11 THE COURT: -- just in terms of consensus, does --
12 is Brooklyn closer for most of you all than my regular
13 courthouse? And traditionally when we do that, Mr. Dimino,
14 the U.S. Trustee's Office typically appears by video from
15 here, so we would have that set up the same way.

16 MR. DIMINO: Yes, Judge. And the camera does add
17 ten pounds. So --

18 (Laughter)

19 UNIDENTIFIED SPEAKER: Well, then I'm not doing
20 it.

21 THE COURT: Well, that's why I don't have it
22 pointed at me.

23 All right. Then any consensus on the telephone?

24 MR. EISENBERG: Thank you, Your Honor. This is
25 Gary Eisenberg from Perkins Coie. We appreciate the offer

1 for Brooklyn. I think that would be, from our perspective,
2 very accommodating and we -- we would thank the Court for
3 that.

4 THE COURT: All right. So, then, again, on the --
5 looking down the road October 10 at 10 in Brooklyn. When I
6 sit in Brooklyn, I use the Judge Duberstein Memorial
7 Courtroom --

8 MR. GRILLO: Okay.

9 THE COURT: And I'm sure it's either on the
10 website or one of my law clerks can get you the specific
11 room number for that, and we are video equipped in that
12 courtroom as well. So if we have parties from out of state
13 -- which includes New Jersey at that point. But if we have
14 parties from out of state who want to appear by video, as
15 long as it's not too many people, we can also accommodate
16 other video appearance. But we are limited technologically
17 on how many video appearances we can do.

18 MR. GRILLO: Understood, Your Honor. We'll --
19 we'll work with the parties to figure all of that out.

20 THE COURT: All right. So then in terms of that
21 oncoming slew of omnibus motions, unless any of them have to
22 be heard before October 10th, I'll set the day aside for
23 this -- these cases, and we'll hear any and all such matters
24 at that time.

25 Do you need an earlier date for any of the other

1 anticipated motions?

2 MR. GRILLO: Just the shippers and warehouseman.

3 Excuse me.

4 (Pause)

5 MR. GRILLO: Your Honor, could -- could we use the
6 September -- to try and economize on the dates, could we use
7 September 4th also for the retentions and for the shippers
8 and warehousemen's motion? I think -- I think we talked
9 about that earlier. The retention program, the -- you know,
10 if you carry over --

11 THE COURT: The curb program.

12 MR. GRILLO: -- the program. Yes.

13 THE COURT: I don't think it's a 6,000 -- it's not
14 -- those aren't the --

15 MR. DIMINO: 6004, Judge.

16 THE COURT: -- 21 day hearings?

17 MR. DIMINO: I think that would be too soon. It's
18 21 days, so -- 6004 --

19 THE COURT: These aren't -- these aren't
20 professional retentions. These are the curb --

21 MR. GRILLO: No. This is the --

22 MR. DIMINO: Well, I know --

23 THE COURT: No. I'm not -- I'm not setting the
24 professional retentions done.

25 MR. GRILLO: No. No. The employee --

1 (Pause)

2 MR. GRILLO: And the 21 day notice period,
3 September 9th is the first day, doing the calculations here.

4 THE COURT: All right.

5 (Pause)

6 THE COURT: The 341 meeting is on September 20th?

7 MR. GRILLO: That's correct.

8 THE COURT: All right. Then why don't we go ahead
9 and set the -- those 21 day type motions on September --
10 what time is the 341?

11 MR. DIMINO: Judge, I think it's 11:00, but I
12 can't be positive.

13 THE COURT: All right.

14 MR. DIMINO: I can check with my office and, if
15 necessary, I can run down and find out.

16 THE COURT: All right. We'll -- all right.

17 MR. DIMINO: It should be --

18 THE COURT: It's at 10:00, so if we -- if we set
19 those -- the warehousemen motion, retention motion --

20 MR. GRILLO: The employee retention motion.

21 THE COURT: The employee retention motion at 11:00
22 on September 20th.

23 MR. DIMINO: Can we do 11:30, Judge? I'm not sure
24 how long the 341 meeting will take.

25 THE COURT: All right. So we'll set it at 11:30

1 on -- set them at 11:30 on September 20th. If you all are
2 running substantially long on the 341 meeting, then just get
3 -- that may or may not be a good sign for the case, but just
4 get a note up to us and if we need to --

5 MR. GRILLO: We'll send someone up --

6 THE COURT: -- just send someone up and the Court
7 will just divide you all up and let some people come up for
8 the hearing and the other people will stay for the 341.

9 MR. GRILLO: We'll -- we'll figure that out, Your
10 Honor. Judge.

11 THE COURT: All right. So September 20th at
12 11:30, go ahead and notice the warehousemen motion and the
13 retention program motion. And then, again, if -- if there's
14 something that arises in the interim that needs to be set
15 then, then we can use that time as well. But we'll set
16 about -- set about 90 minutes for you on September 20th.

17 MR. GRILLO: That would be terrific. Thank you,
18 Your Honor.

19 THE COURT: All right.

20 All right. Anything else, then, before the DIP
21 motion?

22 MR. GRILLO: I think we have everything else
23 covered.

24 THE COURT: All right.

25 MR. GRILLO: Okay. If I may, Your Honor, the

1 motion that's been submitted to the Court is the debtors'
2 motion for debtor-in-possession financing. The debtor-in-
3 possession financing is the product of an extension of
4 negotiations between the debtors and its senior lenders led
5 by JPMorgan Chase. We have negotiated everything from the
6 terms of the motion in the order to the budget which is
7 attached and incorporated as part of the motion. This is,
8 again, something that has been prepared over an extensive
9 period of time.

10 What we can do -- we can do this a couple of
11 different ways, Your Honor. We can sort of highlight how
12 the budget works in the first instance or we can talk about
13 the -- you know, what we're requesting by way of relief in
14 the form of the order and -- and walk through it that way,
15 or we can talk about them in either order, however Your
16 Honor would like to proceed as far as that goes.

17 THE COURT: Why don't we start with the parts that
18 the U.S. Trustee's Office might have objections to and then
19 move to the parts that the Court has concerns with, and then
20 move to the other parties in interest?

21 MR. GRILLO: We can -- we can do that as well,
22 Your Honor. Absolutely.

23 THE COURT: All right.

24 MR. DIMINO: Judge, there's an interim order. I'm
25 assuming what we're looking at is a process that will get us

1 -- and I -- I don't know whether or not the debtors intend
2 to move now or to take that out to the 20th of September, or
3 whether or not a budget exists that goes beyond that in
4 terms of the final hearing. I'm assuming that the final
5 hearing is going to be September 20th.

6 THE COURT: Well, the Court was -- the Court was
7 contemplating using September 4th as the final hearing on
8 the DIP and addressing today enough interim authority to get
9 the debtor through September the 5th or 6th.

10 MR. GRILLO: I think we would like to stick with
11 the 4th. I'm just conversing with JPMorgan's counsel. I
12 think we would like to stay with the 4th, Your Honor, if we
13 could.

14 MR. DIMINO: Judge, based --

15 THE COURT: The Court --

16 MR. DIMINO: -- based --

17 THE COURT: The Court notes no surprise there.

18 (Laughter)

19 MR. GRILLO: Duly noted.

20 THE COURT: We have a bit of -- we have a bit of
21 added breathing on the phone, so if whomever that is just --
22 either hold -- just hold the phone a little bit further
23 back.

24 All right. So, Mr. Dimino. So, in other words,
25 what the Court is contemplating --

1 MR. DIMINO: Judge, basically --

2 THE COURT: -- is a borrowing through --

3 MR. DIMINO: -- if we're going to go back -- if
4 we're taking this to the 4th, based upon our review of the
5 request, other than one small change that we would ask with
6 regard to the carve out in which the United States Trustee
7 did not want to find itself in a position to be fighting
8 with other professionals over its quarterly fee which I
9 believe has been agreed to and has to be carved out of the
10 carve out. We do not have an objection to the request for
11 both the interim borrowing and the use of cash collateral
12 which, in essence, is a -- well, I think it's described as a
13 roll-up of the -- of the first lien position on the
14 (indiscernible). We don't have an objection.

15 MR. GRILLO: Your Honor, if I may. Yes. Mr.
16 Dimino's characterization of how the loan works is correct.
17 He's also correct to say that he's asked to have the carve
18 -- the U.S. Trustee's fee separated out from the carve out
19 so that this way it's not capped in any way.

20 We've spoken with JPMorgan Chase, the lenders,
21 subject to revising the carve-out and reducing it from its
22 existing \$300,000 number to \$250,000 number, and then the --
23 and then the U.S. Trustee's fees would be able to be pay and
24 accumulated uncapped. I believe that's the agreement that
25 we've reached.

1 MR. WIELEBINSKI: Yes. It -- excuse me. It will
2 still remain within the definition of carve-out because we
3 use the definition in other places, but it will be uncapped
4 and not part of the new 250 cap.

5 MR. DIMINO: We appreciate that and thank them,
6 and otherwise have no objection to the request.

7 THE COURT: All right. The primary issue that the
8 -- that the Court had was on the roll-up on a first day
9 hearing. It appeared from review of the motion and the
10 budget that if I approved the incremental, I think, is the
11 adjective used in the papers, but if I approve the
12 incremental roll-up today, by the time we get to a final
13 hearing it will be moot because the full 40 million or so
14 would be drawn before the final hearing, at least based upon
15 the way the Court is reading the papers. And I may be
16 misreading them.

17 So is the -- is the roll-up something that can be
18 taken up at the time of the final hearing on -- on full
19 notice?

20 MR. GRILLO: What -- what I think we would like to
21 discuss with the Court is the prospect -- the roll-up was an
22 important consideration for the lenders, and there is
23 something unique about this deal in the fact that the lion's
24 share of the loan does need to be borrowed in relatively
25 short order. And that's a function where it is.

1 From the debtors' point of view, given -- given
2 the way the collateral worked and given the fact that we
3 believe the senior lenders are substantially over-secured,
4 we were -- we were convinced that this made the -- that this
5 made sense under those circumstances, and that I guess the
6 Court always has its equitable powers, you know, that it can
7 -- if it finds a reason that that should be unwound or that
8 there are -- or that there's some question on the challenge
9 of the liens, that the Court can certainly revisit it later.

10 I -- I don't want to be -- speak for JPMorgan
11 Chase, but our sense is that we would ask the Court to
12 authorize the roll-up today. The Court can certainly always
13 reconsider it if there's a reason to, but we don't think
14 there's going to be one. But we sort of leave it to
15 JPMorgan Chase to address --

16 THE COURT: All right.

17 MR. GRILLO: -- any concerns they may have.

18 MR. GLERUM: Good morning again, Your Honor.

19 The roll-up is an important part of this
20 transaction for us. We've got the same set of lenders
21 before and after. We perceive ourselves and we have gotten
22 the same information from the debtor and its professionals
23 that we are substantially over-secured.

24 The roll-up feature is the way this loan has
25 worked historically. And, in fairness, when we got the

1 first -- the very first budget from the debtor, it
2 contemplated this as well because this is how the loan
3 works. Obviously, if there's a challenge to our position
4 that is somehow successful, we will have a problem and we
5 will have to fix it. And I'm sure Your Honor will have a
6 series of ideas as to how that could be done.

7 But it -- it is the -- it is a principal part of
8 the deal for JP and also the participants that we have a
9 roll-up of this nature, not immediate, but as the Court
10 points out, yes, it does roll over quickly. But we would
11 like to have that, please, as part of this on the first day.
12 We are here. We could have pushed for a liquidation. We
13 were asked to put -- we were asked to lend to a sale and we
14 are lending to a sale. And we are trying to be supportive
15 of the debtors' efforts. I haven't heard a bad word yet
16 about myself. But we would -- we would like, please, to
17 have the roll-up included in the form in the order in which
18 it presently is.

19 Thank you.

20 THE COURT: All right.

21 MR. GRILLO: I just want to make two supporting
22 points, if I may, Your Honor.

23 One is that we've asked the senior lenders to lend
24 considerably more than what their exposure was down to at
25 this point in time. They were the only parties that stepped

1 up to do so.

2 Just by way of background -- and this is all in
3 the Kunzmann affidavit -- the debtors did go out and solicit
4 third party DIP loan bids to either prime or take out the
5 senior loans. We were unsuccessful as far as that went. We
6 also asked our second lien lenders whether they would
7 consider putting in the loan. We believe that, you know,
8 that as a matter of the dynamics of the negotiation that the
9 lender's request was the best we received. We did go out
10 and solicit other bids. We were unable to obtain them.

11 So we're supportive of the request on that basis,
12 and given the fact that they are materially increasing their
13 exposure to the debtors and because we believe that they're
14 over-secured, we believe it's appropriate at this time.

15 THE COURT: All right.

16 Let me ask other parties in interest, first in the
17 courtroom, that wish to be heard on the DIP facility.

18 All right. On the telephone?

19 MR. EISENBERG: Your Honor, this is Gary
20 Eisenberg, again, from Perkins Coie on behalf of HTC.

21 Obviously, there's a lot to digest in the DIP
22 motion, but one issue that jumped out at me in the brief
23 time I had a chance to look at it between the filing and
24 today's hearing is the definition of collateral. And my
25 concern, in particular, that I have is whether or not

1 avoidance actions and other property of the estate that is
2 created by operation of the filing of a bankruptcy case is
3 intended to be included in the definition of collateral,
4 which we would find problematic.

5 The reason why I raise the issue is that the
6 definition in the DIP agreement of collateral references
7 collateral that's covered by the security agreement. The
8 security agreement isn't an exhibit to the motion, at least
9 in not what I was able to locate. And some of the other
10 broad language in the DIP order and some of the other papers
11 leaves at least an ambiguity as to whether or not avoidance
12 actions and other post-petition filing rights of the debtor
13 are sought to be encumbered with the collateral designation
14 and that would be very problematic from the perspective of
15 unsecured creditors.

16 MR. GRILLO: Your Honor, may I respond?

17 THE COURT: Yes.

18 MR. GRILLO: Okay. After speaking with the
19 lenders, yes. Mr. Eisenberg is correct that the avoidance
20 actions have been asked to be pledged to the lenders. We
21 were -- we confirmed with JPMorgan Chase that they would be
22 willing to defer that to the final hearing, consideration of
23 that, and a committee will have been appointed at that point
24 in time. I'm sure Mr. Eisenberg's client intends to
25 participate. They are the largest unsecured creditor in

1 these cases. And subject to whatever (indiscernible) we
2 think we have.

3 THE COURT: And as far as the other prong,
4 wouldn't the -- wouldn't the post-petition liens be to the
5 same extent as -- the same extent validity priority is prior
6 to the petition date? In other words, is there -- there --
7 there seem to be some references to potentially --
8 potentially priming a lien that the debtor doesn't believe
9 to be valid with a party that I'm not sure is --

10 MR. GRILLO: Pantech.

11 THE COURT: -- part of this hearing or not.

12 MR. GRILLO: Your Honor, let me discuss the
13 Pantech issue. Thank you for reminding me.

14 So, Your Honor, one of the trade suppliers to the
15 debtor is -- is Pantech. Pantech provides mobile devices.
16 They're owed, I think, approximately \$40 million and they
17 filed a UCC financing statement. But the bottom line is is
18 that there was no security agreement and there was no
19 agreement ever into -- ever entered into with Pantech. So
20 we think it was just kind of, you know, a sort of one off
21 filing. But they've never been secured. We don't have a
22 security agreement with them. We've been in negotiations
23 and discussions with Pantech prepetition. It's never come
24 up in those discussions and it's just kind of out there.

25 So given the fact that the senior lenders did have

1 the first lien regardless of whether or not the Pantech
2 filing, because it was only within a couple of months prior
3 to the petition date, with that in mind, that would be the
4 priming other than with respect to their -- their own liens
5 with respect to the debtor.

6 THE COURT: All right. Any other party in
7 interest?

8 All right. So then the Court will carve-out
9 probably the wrong expression, but --

10 (Laughter)

11 THE COURT: -- we'll defer the granting or
12 authorizing the granting of any liens on the Chapter 5
13 actions until the time of final hearing. But then we'll
14 otherwise approve the DIP facility.

15 The simplest way to do this, rather than get a 67
16 page redline draft of the 65 page order is if you all will
17 simply -- the Court can interline it at the end, but then
18 sometimes the lawyers go crazy when the Court puts its own
19 words in its own order. So if you all want to submit a
20 revised form that just has a notwithstanding paragraph at
21 the end that any issues regarding liens on Chapter 5
22 avoidance actions are reserved until the time of final
23 hearing, that that would make it simpler and easier to
24 follow.

25 MR. WIELEBINSKI: That will be fine, Your Honor.

1 MR. GRILLO: And we'll do the same for the U.S.
2 Trustee's fees. Instead of changing the order we'll --

3 THE COURT: Just put a --

4 MR. GRILLO: -- we'll put those --

5 THE COURT: -- notwithstanding at the end.

6 MR. GRILLO: Right.

7 THE COURT: All right. I recognize this is not
8 the type of case that would go with my usual of sending a
9 two-page interim cash collateral DIP order. So we will
10 continue to slog through all 65 pages of the order, plus the
11 48 pages of attachments. But I would anticipate, since
12 somebody in your office is already working on revising that
13 order or will be doing that before they get lunch today,
14 that we'll get a revised form of order sometime early
15 tomorrow so that we can turn it and get it signed and back
16 to you all certainly before the end of the week.

17 MR. WIELEBINSKI: Yeah. We can sit here and
18 interlineate it right now and then sign it and get a
19 conforming copy if that would help.

20 MR. GRILLO: Yeah. We --

21 THE COURT: And I'll so order the calendar that --
22 that the --

23 MR. GRILLO: We can submit it today. I'm looking
24 at my colleague to see if --

25 UNIDENTIFIED SPEAKER: Yeah.

1 MR. GRILLO: -- we can submit it today, right?

2 UNIDENTIFIED SPEAKER: Yeah.

3 MR. GRILLO: We'll get it submitted today and then
4 this way we can --

5 THE COURT: Well --

6 MR. GRILLO: -- with -- because we're just going
7 to change the end as -- as Your Honor, I think, suggested.
8 We'll put in two paragraphs. We'll show the two paragraphs
9 to everyone. We'll submit it around and then we'll submit
10 it, you know, indicating, you know, that we've gotten sign
11 off from everyone.

12 THE COURT: All right. I will otherwise then so
13 order the calendar that the DIP facility is approved with
14 the modifications. Avoid -- any lien on avoidance actions
15 is deferred until the time of final hearing, and the carve-
16 out of the carve-out for the U.S. Trustee fees.

17 MR. GRILLO: Thank you. We also, I'm advised,
18 have a thumb drive with the order so maybe we could actually
19 do it while we're here and we could -- and then upload it
20 while -- before everyone leaves for lunch.

21 THE COURT: Well, we have free Wi-Fi --

22 (Laughter)

23 THE COURT: -- in the building. I don't know who
24 the carrier is and I --

25 (Laughter)

1 MR. GRILLO: And we have devices in a bag back
2 here that if anyone wants one, we can --

3 THE COURT: It -- if you all do not have a mobile
4 --

5 MR. GRILLO: -- we can do that as well.

6 THE COURT: -- device in the courthouse that can
7 accommodate that change, then the case -- then the case
8 probably won't be able to last very long. So --

9 MR. GRILLO: Excellent, Your Honor.

10 MR. EISENBERG: Thank you, Your Honor. This is
11 Gary Eisenberg again. If -- if I could have somebody email
12 a copy of it as its revised we can have the opportunity to
13 take a look as well. I assume that if somebody has Wi-Fi
14 access, that that shouldn't be beyond technological
15 capacity.

16 MR. GRILLO: We can do that.

17 THE COURT: All right.

18 MR. GRILLO: We can do that, Mr. Eisenberg.

19 MR. EISENBERG: Thank you very much. I appreciate
20 it.

21 THE COURT: All right. Anything else, then,
22 before --

23 MR. GRILLO: I think that concludes -- again, we
24 thank the Court for its time this morning and the parties
25 for making their way out here for this. And --

1 THE COURT: You can --

2 MR. GRILLO: -- with their support we can get this
3 done.

4 THE COURT: Well, you can thank Mr. Dixon. Your
5 -- apparently your case woke him up in the middle of the
6 night. That's how we knew it was here, so --

7 (Laughter)

8 THE COURT: All right.

9 MR. GRILLO: Thank you, Your Honor.

10 THE COURT: Then we will -- we will look for your
11 orders that haven't yet been submitted and we will see you
12 back on September 4th for bid procedures and the final
13 hearing on the DIP.

14 MR. GRILLO: Right. And that -- and that we're
15 doing here, Your Honor, correct, or --

16 THE COURT: That will be here.

17 MR. GRILLO: That will be -- just for everyone's
18 benefit --

19 THE COURT: It will be here.

20 MR. GRILLO: -- that will be here.

21 THE COURT: That will be here. September 20th
22 will also be here.

23 MR. GRILLO: Right.

24 THE COURT: October 10th will be Brooklyn.

25 MR. GRILLO: Okay. Just to make sure everyone

1 understand.

2 THE COURT: All right. Very well.

3 (A chorus of thank-you)

4 THE COURT: We'll be in recess on Personal
5 Communications.

6 THE CLERK: All rise.

7 (Whereupon, these proceedings were concluded at 12:20
8 p.m.)

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I N D E X

RULINGS

	Page	Line
Motion to Use Cash Collateral (Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post-Petition Financing and to Grant Security Interests and Superpriority Administrative Expense Claims Pursuant to 11 U.S.C. 105(a), 364(c); (B) Authorizing the Debtors to Use Cash Collateral; (C) Modifying the Automatic Stay Pursuant to 11 U.S.C. 362; (D) Granting Adequate Protection Pursuant to 11 U.S.C. 361 and 363; and (E) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001) filed by Emanuel C. Grillo on behalf of Personal Communications Devices, LLC [4]	56	9

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I N D E X

RULINGS

Page Line

Motion to Authorize/Direct (Motion
of the Debtors for Entry of Interim
and Final Orders Authorizing the
Debtors to (I) Pay Prepetition
Personnel Wages, Salaries, and Other
Compensation; (II) Reimburse
Prepetition Personnel Business
Expenses; (III) Make Payments for
Which Prepetition Payroll Deductions
Were Made; (IV) Continue Employee
Benefit Programs; (V) Pay Workers
Compensation Obligations; and (VI)
Pay All Costs and Expenses Incident
to the Foregoing) Filed by Emanuel C.
Grillo on behalf of Personal
Communications Devices, LLC [5]

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I N D E X

RULINGS

	Page	Line
Motion to Authorize/Direct (Motion of the Debtors for Interim and Final Orders Authorizing the Debtors to (I) Continue Using Debtors Bank Accounts and Cash Management System, and (II) Honor Certain Prepetition Obligations Related Thereto) [6]	26	4
Motion for Continuation of Utility Service (Motion of the Debtors for Interim and Final Orders (A) Prohibiting Utility Companies from Discontinuing, Altering, or Refusing Service, (B) Deeming Utility Companies to Have Adequate Assurance of Payment, and (C) Establishing Procedures for Resolving Requests for Additional Assurance) [7]	28	14

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I N D E X

RULINGS

	Page	Line
Motion to Authorize/Direct (Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing, But Not Directing, the Debtors to (A) Maintain and Administer Customer Programs and (B) Honor Related Prepetition Obligations to Customers and (II) Authorizing, But Not Directing, Financial Institutions to Honor All Related Payment Requests) Filed by Emanuel C. Grillo on behalf of Personal Communications Devices, LLC [8]	31	16
Motion for Joint Administration of Case 13-74303 with Case(s) 13-74304 Filed by Emanuel C. Grillo on behalf of Personal Communications Devices, LLC [3]	18	16

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I N D E X

RULINGS

	Page	Line
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Motion to Authorize/Direct (Motion		
of the Debtors for an Order (1)		
Extending the Debtors' Time to File		
Schedules and Statement of Financial		
Affairs, (2) Authorizing the Debt to		
File a Consolidated List of the		
Debtors 30 Largest Unsecured Creditors,		
(3) Waiving the Requirement of E.D.N.Y.		
1007-1 That the Debtors File a List		
of Creditors, (4) Authorizing the		
Debtors to Mail Initial Notices and		
(5) Authorizing the Debtors to Use		
Prepetition Business Forms) Filed by		
Emanuel C. Grillo on behalf of		
Personal Communications Devices,		
LLC [9]	33	4

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I N D E X

RULINGS

	Page	Line
Hearing on Application to Employ Epiq		
Bankruptcy Solutions, LLC, as Notice		
and Claims Agent (Application of the		
Debtors for Entry of an Order		
Authorizing the Employment and		
Retention) Filed by Emanuel C. Grillo		
on behalf of Personal Communications		
Devices, LLC [12]	34	19

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I N D E X

RULINGS

Page Line

Motion to Authorize/Direct (Ex Parte
Motion of the Debtors to Shorten Time
with Respect to Hearing on Debtors'
Motion for Entry of Order Approving
Bidding Procedures Relating to Sale of
the Debtors' Assets; (II) Approving Bid
Procedures; (III) Scheduling a Hearing
to Consider the Sale; (IV) Approving
the Form and Manner of Notice of Sale
by Auction; (V) Establishing Procedures
for Noticing and Determining Cure
Amounts; and (VI) Granting Related
Relief) Filed by Emanuel C. Grillo on
behalf of Personal Communications
Devices, LLC (RE: Related document(s)
10 Motion to Sell filed by Debtor
Personal Communications Devices,
LLC) [11]

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C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sherri Breach

Digitally signed by Sherri Breach
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Date: 2013.08.26 15:00:04 -04'00'

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AAERT Certified Electronic Reporter & Transcriber

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Date: August 26, 2013